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Ticket to Work and Work Incentives Improvement Act (Conference Report) H.R. 1180

Committees on Commerce and Ways & Means
H.Rept. 106-478
Submitted by Mr. Archer on November 17, 1999

Floor Situation:

The House is scheduled to consider the conference report to H.R. 1180 on November 18, 1999. On Wednesday, November 17, the Rules Committee granted a rule waiving all points of order against the conference report and its consideration.

Conference Highlights:

The conference report to H.R. 1180 allows recipients of certain Social Security disability benefits to seek vocational rehabilitation and employment services from providers of their choice and to return to work while retaining their government-sponsored health insurance. Currently, after a nine-month trial work period, a disabled worker who receives Social Security disability insurance (SSDI) benefits but earns more than \$700 per month will lose his or her cash benefits after a nine-month trial work period and Medicare health coverage after 39 additional months. Generally, workers who receive Supplemental Security Income (SSI) disability benefits will lose their Medicaid coverage once earnings make them ineligible for cash benefits. The bill allows workers with disabilities the option to work and keep their health coverage. This legislation creates consumer choice in employment preparation and placement services to reduce the dependency on government assistance and creates a new payment system to reward results by paying service providers part of the benefit savings when disabled individuals leave the rolls for work. It also creates options for individual states to allow the working disabled to purchase Medicaid coverage.

Specifically, the conference report (1) establishes a “ticket to work” program to allow individuals to seek, from the providers of their choice, vocational rehabilitation and other services necessary to obtain and retain employment; (2) extends the current period of eligibility for Medicare coverage for working disabled individuals; and (3) creates new options for states to allow individuals with disabilities to purchase Medicaid coverage.

The conference agreement also provides approximately \$15.8 billion in tax relief over five years (\$18.4 billion over 10 years) by extending certain tax credits. Specifically, it extends the Research and Development tax credit for five years, the Welfare-to-Work and Work Opportunity tax credits for 30 months, and the Generalized System of Preferences through September 30, 2001. Finally, the measure includes approximately \$2.6 billion in revenue offsets over five years (\$2.9 billion over 10 years).

Provisions:

— *Ticket to Work and Self-Sufficiency* —

The conference report to H.R. 1180 creates a Ticket to Work and Self-Sufficiency program to authorize the Social Security commissioner to provide SSDI and SSI disabled beneficiaries with a “ticket” which they may use to obtain vocational rehabilitation services of their choice from an employment network to enable them to enter the workforce. The bill provides state vocational rehabilitation agencies with the option of participating in the program as an employment network or remaining in the current reimbursement system. State vocational rehabilitation agencies that participate must be reimbursed under current law provisions for those beneficiaries who began receiving services prior to program election.

The conference report authorizes payments to employment networks through one of two payment systems: (1) an outcome based payment system that provides a percentage of the average monthly disability benefit for each month benefits are not payable to the beneficiary due to work (but not for more than 60 months), and (2) an outcome-milestone payment system that provides early payments based on the achievement of one or more milestones towards permanent employment.

The commissioner must assess the cost-effectiveness and effects of the program and report findings to Congress. To advise the commissioner and report to Congress on program implementation and suggested refinements, the bill creates an advisory panel consisting of experts representing consumers, providers of services, employers, and employees.

Work Incentives Outreach and Assistance Programs. This measure creates an outreach program to provide information on work incentives to individuals with disabilities and an assistance program to help people access work incentives. The bill authorizes up to \$23 million annually (through FY 2004) for the SSA to provide grants to states or private organizations for the outreach program. The bill also authorizes the commissioner to make grants of up to \$7 million annually (through FY 2004) to advocacy organizations to provide information to individuals to obtain vocational rehabilitation and employment services.

Access to Health Care Coverage

Expanding Medicaid Coverage Options. The conference report establishes two new optional eligibility categories to allow states to expand Medicaid coverage to workers with disabilities. Effective October 1, 2000, these options build on previous reforms including a recent provision enacted in the 1997 Bal-

anced Budget Act (*P.L. 105-33*). The BBA permitted states to offer a Medicaid buy-in for those with incomes up to 250 percent of the poverty level who would be eligible for Supplemental Security Income (SSI) disability benefits except for their income. Buy-ins allow people who are ineligible for Medicaid because they earn too much the option to remain eligible if they pay for all or part of their coverage.

The first option builds on the BBA provision by allowing states to offer a Medicaid buy-in to people with disabilities who work and have earnings greater than 250 percent of the poverty level. Participating states may set income limits and require cost-sharing and premiums, based on income, on a sliding scale up to requiring the individual to pay the full premium amount. States may require individuals who earn between 250–450 percent of the poverty level to pay 100 percent of the Medicaid premium as long as the premiums do not exceed 7.5 percent of their total income. In addition, states must require payment of 100 percent for individuals with adjusted gross incomes greater than \$75,000 unless states choose to subsidize the premium using their own funds. States may cover people who continue to have a severe medically determinable impairment, but lose eligibility for SSI or SSDI disability benefits because their medical condition improves.

Continuation of Medicare Coverage. The bill establishes a four and one-half year extension beyond the current four year maximum Medicare coverage for disabled people who return to work and earn more than the substantial gainful activity (SGA) level. Currently, SSDI beneficiaries may continue to receive Medicare coverage after returning to work for 39 months beyond the nine-month trial work period, but afterwards must pay the full Medicare premium. In many cases, individuals who leave SSDI to return to work do not have access to employer-based health insurance and they tend to find policies in the individual insurance market overly expensive.

Infrastructure Grants. The conference report to H.R. 1180 establishes a grant program effective October 1, 2000, to make funds available to states to design, establish, and operate an infrastructure to support working individuals with disabilities. The measure delinks state participation in the grant programs from adoption of Medicaid optional eligibility categories. States that do not choose to take up the optional Medicaid eligibility category-permitting expansion to individuals with disabilities with incomes up to 250 percent of poverty level are subject to a maximum grant award established by criteria developed by the HHS Secretary (consistent with the limit applied to states that do take up the option). For those states that do take up the option, the maximum award will be 10 percent of what the state spends under the Medicaid buy-in option, rather than the 15 percent included in the House bill.

Demonstration Program. The measure establishes a time-limited demonstration beginning October 1, 2000, program to allow states to extend Medicaid coverage to workers who have a disability that, without health care, will become severe enough to qualify them for SSI or SSDI. The demonstration will provide new information on the cost effectiveness of early health care intervention in keeping people with disabilities from becoming too disabled to work. The conference agreement authorizes \$250 million for the demonstration and delinks eligibility for demonstration funds from adoption of Medicaid optional eligibility categories. States' definitions of workers with potentially severe disabilities can include individuals with a potentially severe disability that can be traced to congenital birth defects as well as diseases or injuries developed or incurred through illness or accident in childhood or adulthood.

Demonstration Projects and Studies

The measure authorizes demonstration projects that gradually reduce cash benefits as earnings increase. Current law eliminates all benefits when earnings exceed \$700 per month after the end of the nine-month trial work period; under the demonstration, SSDI benefits would be reduced by \$1 for each \$2 earned

above a level to be determined by the Social Security commissioner. Additionally, the bill renews SSDI demonstration project authority (for projects involving applicants and beneficiaries) for five years. The measure requires the GAO to study (1) the effectiveness of current tax credits and other disability-related employment incentives under the Americans with Disabilities Act; (2) the effectiveness of SSA benefits for people who are entitled to both SSI and SSDI benefits; (3) the effects of the SGA level on work incentives; and (4) SSA's efforts to conduct disability demonstrations.

Miscellaneous Provisions

The conference report authorizes state and local prisons that provide inmate lists to the SSA to receive up to \$400 per inmate found to be collecting Social Security disability benefits illegally. The SSA also must provide the inmate lists to other benefit programs to help determine eligibility. Additionally, the bill restricts payments of OASDI benefits to prisoners who are convicted of a criminal offense and are confined—for more than 30 days—to a penal institution; another institution if found guilty but insane; or are sex offenders who, upon completing a prison term, remain confined in a public institution because they are a danger to others.

The measure also (1) creates a two-year “window of opportunity” to allow clergy members who initially revoked Social Security coverage to be eligible again; (2) allows states to permit employers to submit wage reports annually for domestic workers; (3) allows the Social Security Commissioner to charge an assessment of 6.3 percent for withholding, processing, and forwarding an attorney's fee directly to the attorney; (4) extends the authority of state Medicaid fraud control units to investigate and prosecute fraud in other federal health programs; (5) changes the index for the special allowance paid to lenders for participation in the federal Family Education Loan Program from 91-day Treasury bills to that for three-month commercial paper; (6) changes the schedule for reimbursements by states to the SSA for state supplement payments administered by the SSA under the SSI program; (7) applies provisions incorporated in the Agriculture Department appropriations laws for FYs 1999 and 2000 to FYs 2001 through 2009 for the amount of spending required on commodities used in the School Lunch program; (8) clarifies the definition of foster child for purposes of the Earned Income Credit Program; and (9) delays the effective date of a final rule by the HHS on the organ procurement and transplantation network until 90 days after enactment of this bill.

— Tax Relief Extension Act —

The conference report provides approximately \$15.8 billion in tax relief over five years (\$18.4 billion over 10 years) by extending certain tax credits. It is paid for entirely with revenue offsets in 2000. In 2001 and beyond, the measure is paid for through a combination of revenue offsets and the non-Social Security budget surplus. These tax provisions were not included in H.R. 1180 as it passed the House.

Research & Development Tax Credit. The conference agreement extends the R&D tax credit for five years through June 30, 2004 (the credit expired on June 30, 1999) for approximately \$10.5 billion over five years. The bill makes eligible for the credit Puerto Rico and U.S. territories. The bill also increases the applicable percentages in the alternative incremental credit by one percentage point. Generally speaking, a 20 percent tax credit is available for qualified research expenditures that include (1) “in-house” expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid by the taxpayer for qualified research conducted on the taxpayer's behalf, or under contract with a third party. The credit is also

available to corporations that pay universities and other nonprofit scientific research organizations to conduct research on behalf of the corporation.

Welfare-to-Work Tax Credit. The conference report extends the welfare-to-work tax credit for 30 months through December 31, 2001, for approximately \$272 million in tax relief. The tax credit provides employers with a credit on the first \$20,000 of eligible wages paid to long-term welfare recipients during their first two years of employment. The credit equals 35 percent of the first \$10,000 of eligible wages paid in the first year, and 50 percent of the first \$10,000 in wages paid during the second year. The maximum employer benefit allowed is \$8,500 per employee. A qualified long-term employee includes (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) family members who have received assistance for a total of 18 months or more after August 5, 1997 (whether consecutively or not) if they are hired within two years after the date that the 18th month of assistance is reached; and (3) family members who are no longer eligible for assistance because of either federal or state time limits, if they are hired within two years after the time limits made them ineligible to receive support benefits.

Work Opportunity Tax Credit. The measure extends the work opportunity tax credit (WOTC) for 30 months through December 31, 2001 for approximately \$1.1 billion in tax relief. This credit generally equals 40 percent (25 percent for employment of less than 400 hours) of qualified wages, which includes compensation earned during the first year of employment. Generally, a maximum of \$6,000 of wages may be considered for one person during their first year of employment. Target groups for employers to hire from include (1) individuals eligible to receive welfare benefits; (2) certain ex-felons who are hired within one year of their release from prison or conviction date; (3) high-risk youth; (4) individuals between 18 and 25 years of age whose families have received food stamp assistance for at least six months at the time they are hired for employment; (5) vocational rehabilitation referrals; (6) qualified summer youth employees; (7) certain veterans who receive food stamps; and (8) recipients of certain SSI benefits.

Generalized System of Preferences (GSP). The measure extends the GSP through September 30, 2001. Under the program, designated developing countries may receive special duty-free treatment for eligible products that enter the United States. This provision provides approximately \$798 million in tax relief over five years.

Exceptions under Subpart F for Certain Active Financing Income. The measure extends for two years, through December 31, 2001, the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived from a banking, financing, or similar business, or in the conduct of an insurance business. Under current subpart F rules, 10-percent U.S. shareholders of a controlled foreign corporation (CFC) are currently subject to U.S. tax on certain income earned by the CFC, whether or not such income is distributed to the shareholders. This provision provides approximately \$1.7 billion in tax relief over five years.

Oil and Gas Wells. The conference report extends through December 31, 2001, the present-law rule suspending the 100-percent-of-net-income limitation on oil and gas production from marginal wells. The tax code permits taxpayers to recover their investments in oil and gas wells through depletion deductions. In the case of certain properties, the deductions may be determined using the percentage depletion method. Among the limitations that apply in calculating percentage depletion deductions is a restriction that, for oil and gas properties, the amount deducted may not exceed 100 percent of the net income from that property in any year. This provision provides approximately \$71 million in tax relief over five years.

Minimum Tax Relief For Individuals. The conference agreement allows individual taxpayers to use nonrefundable personal tax credits (*i.e.*, the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child tax credit, the credit for interest on certain home mortgages, the HOPE Scholarship and Lifetime Learning credits, and the D.C. homebuyer's credit) without regard to the alternative minimum tax. The bill extends this credit through 2001. This provision provides approximately \$2.9 billion in tax relief over five years for the one million individuals affected by this tax situation.

Employer-Provided Educational Assistance. The measure extends the tax exclusion for employer-provided educational assistance for undergraduate-level courses through December 31, 2001. This credit, which does not apply to graduate courses, currently expires on June 1, 2000. This provision provides approximately \$584 million in tax relief over five years.

Brownfields Environmental Remediation. The conference report extends through December 31, 2001, current-law provisions that allow taxpayers to deduct certain environmental remediation costs at qualified contaminated sites known as "brownfields." This provision provides approximately \$114 million in tax relief over five years.

Other Provisions. The measure also (1) extends the authority for states to issue tax-credit bonds for public schools that qualify as zone academies through 2001 (\$92 million over five years); (2) extends through 2001 and modifies the tax credit for electricity produced by wind and closed-loop biomass facilities (\$135 million over five years); (3) extends through 2001 the \$5,000 tax credit for first-time homebuyers in the District of Columbia (\$20 million over five years); and (4) increases the amount of rum excise tax that is paid to Puerto Rico and the Virgin Islands from \$10.50 per gallon to \$13.25 per gallon (\$150 million over five years).

The conference report also prohibits disclosure of advance pricing agreements (APAs) and APA background files. The APA program is an alternative dispute resolution program conducted by the IRS, which resolves international transfer pricing issues prior to the filing of the corporate tax return. Specifically, an APA is an advance agreement establishing an approved transfer pricing methodology entered into among the taxpayer, the IRS, and a foreign tax authority. Finally, the measure (1) adds certain vaccines against conjugate streptococcus pneumoniae to the list of taxable vaccines; (2) authorizes the Treasury Secretary to postpone certain tax-related deadlines for up to 90 days if a taxpayer has been affected by an actual Y2K failure; (3) delays the requirement that registered motor fuel terminals offer dyed fuel as a condition of registration until January 1, 2002; and (4) stipulates that federal production payments to farmers are taxable in the year they are received.

Revenue Offsets

The conference report includes approximately \$2.6 billion in revenue offsets over five years (\$2.9 billion over 10 years). These provisions are outlined below.

Real Estate Investment Trusts (REITs). The conference agreement makes several modifications to the rules governing REITs. Specifically, the measure (1) prohibits REITs from owning more than 10 percent of the total value of securities of a single issuer; (2) permits REITs to own and operate a health care facility for at least two years; (3) modifies REIT distribution requirements to conform to regulated investment companies (RICs); (4) modifies earnings and profit rules for REITs and RICs; (5) establishes an exception to the limitations on ownership of securities in the case of taxable REIT subsidiaries; and (6) establishes rules for computing the permitted ownership of an independent contractor for a REIT when its stock is publicly traded.

REITs are companies dedicated to owning and, in most cases, operating income-producing real estate, such as apartments, shopping centers, office complexes, and warehouses. Some REITs also are engaged in financing real estate. A REIT is legally required to pay virtually all of its taxable income (95 percent) to its shareholders on an annual basis. A REIT may deduct the dividends paid to the shareholders from its corporate tax bill if the company's assets are primarily comprised of real estate held for the long term, the company's income is mainly derived from real estate, and the company pays out at least 95 percent of its taxable income to shareholders. Because REITs may deduct the dividends they pay to their shareholders, they are, in substance, treated as pass-through entities under present law.

Other Offsets. The conference report includes a number of offsets. Specifically, it (1) extends information reporting on cancellation of indebtedness to non-bank financial institutions; (2) extends through December 31, 2005, the current-law provision that permits employers to transfer excess defined benefit plan assets to a special account for retiree health benefits; (3) prohibits the use of the installment method of accounting for dispositions of property that otherwise must be reported for federal income tax purposes using an accrual method of accounting; (4) clarifies the treatment of capital gains from constructive ownership transactions; and (5) increases the estimated tax safe harbor for an individual with an adjusted gross income of more than \$150,000 from 106 percent to 108.5 percent beginning in 2000 and to 110 percent in 2001; (6) clarifies the tax treatment of income and losses on derivatives; (7) prohibits charitable contribution deductions for transfers associated with split-dollar insurance arrangements; and (8) modifies distributions by a partnership to a corporate partner of stock in another corporation.

Legislative History:

The House passed H.R. 1180 by a vote of 412-9 on October 19, 1999. The Senate passed its version (S. 331) by unanimous consent on October 21, 1999.

Other Information:

For information on H.R. 1180 as it was debated in the House, see *Legislative Digest*, Vol. XXVIII, #30, October 15, 1999.



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